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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/821,105	04/07/2004	Yoshifumi Nishida	SON5180,39A1	8991
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JOHN P. O'BANION O'BANION & RITCHEY LLP 400 CAPITOL MALL SUITE 1550 SACRAMENTO, CA 95814			EXAMINER GREENE, JOSEPH L	
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/821,105

**Applicant(s)**

NISHIDA, YOSHIFUMI

**Examiner**

JOSEPH L. GREENE

**Art Unit**

2451

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 17 March 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-7, 10-17, 19-31 and 33-39 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-7, 10-17, 19-31, and 33-39 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/808)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_
- Paper No(s)/Mail Date \_\_\_\_\_

**DETAILED ACTION**

1. Claims 1-7, 10-17, and 19-39 are currently pending in this application.
2. Claims 1, 14, 19, 26, and 27 are amended as filed on 03/17/2009.
3. Claims 8-9, 18, and 32 are canceled as filed on 03/17/2009.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. **Claims 1-6, 13-14, 16, 19-21, 27-31, and 33-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Patel et al. (Patent No. US 6,731,600 B1), hereinafter Patel, in view of Nandy et al. (Patent No. US 6,826,147 B1), hereinafter Nandy.**

6. With respect to claims 1, 14, and 27, Patel disclosed a system for controlling network congestion (column 13, 24-30), comprising: a device configured for communicating a sequence of packets over a network; means, within said device, for sending packets of a sequence in a back-to-back nature, wherein back-to-back packets are packets which are communicated, with no delay between the back of one packet

and beginning of the next packet, one after another in a single burst within the sequence of packets (column 10, lines 2-12); and means, within said device, for explicitly indicating which packets within said sequence of packets are being sent back-to-back (column 10, lines 5-12), and for setting congestion control parameters for a sender in response to estimating network bandwidth based on the receipt, by a receiver, of explicit back-to-back packet indications (column 9, lines 61-64 and column 13, lines 24-30), but while Patel did provide a method to indicate that said packets are being sent back-to-back (column 10, lines 5-12) and that there are other means of doing as much (column 10, lines 46-52), Patel did not explicitly state that one of the other means was by explicitly editing the maximum segment size. However, Nandy did teach editing the maximum segment size to provide an indication (column 10, lines 38-41, where this shows the congestion control window is adjusted and congestion control windows are adjusted by editing their associated MSS values; and column 7, lines 48-57, where this shows that the MSS indicates the amount of credits that can be sent. Thus, adjusting MSS values for indication purposes is shown).

Both the systems of Patel and Nandy are directed towards systems for congestion control and therefore, it would have been obvious to a person having ordinary skill in the art, at the time of the invention, to combine the teachings of Patel, to utilize MSS modulation indications, as taught by Nandy, in order to provide less packet overhead by not requiring bits for packet indications, Thus increasing the systems speed.

7. As for claims 2 and 28, the combination of Patel and Nandy disclosed all of the limitations described in claims 1 and 27 (respectively). In addition, Patel taught a means for estimating the number of back-to-back packets received by the receiver from the sender and utilizing that information in conjunction with the explicit back-to-back packet indications (column 11, lines 1-4).

8. As for claims 3 and 29, the combination of Patel and Nandy disclosed all of the limitations described in claims 1 and 28 (respectively). In addition, Patel taught wherein said estimating of back-to-back packets received from the sender comprises determining the amount of data within acknowledgement packets (ACKs) and/or determining whether transmissions were sent back-to-back in response to examining packet timestamps (column 10, lines 46-52, where this shows the timestamp limitation).

9. As for claims 4 and 30, the combination of Patel and Nandy disclosed all of the limitations described in claims 1 and 28 (respectively). In addition, Patel taught wherein said back-to-back estimates are utilized for checking the presence and validity of explicit back-to-back indications from the sender (column 10, lines 2-12, where Patel teaches the estimating and the acts carried out in the claimed limitations are intended use as seen in MPEP section 2106.II.c).

10. As for claims 5 and 31, the combination of Patel and Nandy disclosed all of the limitations described in claims 1 and 28 (respectively). In addition, Patel taught wherein

said back-to-back estimates are utilized when explicit back-to-back packet indications being received from the sender are either not available or appear erroneous (column 10, lines 2-12, where Patel teaches the estimating and the acts carried out in the claimed limitations are intended use as seen in MPEP section 2106.II.c).

11. As for claim 6, the combination of Patel and Nandy disclosed all of the limitations described in claim 1. In addition, Patel taught wherein said setting of congestion control parameters for a sender regulates packet transmissions by said sender in response to available bandwidth between said sender and the receiver (column 9, lines 61-64 and column 13, lines 24-30).

12. As for claim 16, the combination of Patel and Nandy disclosed all of the limitations described in claim 14. In addition, Patel taught wherein said explicit back-to-back packet indications comprise modulating the setting of at least one header bit indicating back-to-back status of packets being transmitted (column 10, lines 14-17).

13. As for claims 33, and 34, the combination of Patel and Nandy disclosed all of the limitations described in claims 27 and 33 (respectively). In addition, Patel taught wherein said explicit back-to-back packet indications comprise modulating the setting of the maximum segment size (MSS) for indicating back-to-back status of packets being transmitted (column 9, lines 60-64, where the maximum transmission unit is comprised of the maximum segment size).

14. As for claim 13, the combination of Patel and Nandy disclosed all of the limitations described in claim 1. In addition, Patel taught wherein said means for explicitly indicating back-to-back packets and setting congestion control parameters comprises: a computer within said device (column 9, lines 61-64); programming within said computer for, explicitly marking packets, in the sender, according to whether or not they are being sent back-to-back without delays between successive packets (column 10, lines 5-12), estimating bandwidth based on receiving packets from the sender which are marked with back-to-back packet indications (column 9, lines 61-64), determining congestion control parameters in response to said congestion estimating, communicating said congestion control parameters to the sender (column 13, lines 24-30).

15. As for claim 19, the combination of Patel and Nandy disclosed all of the limitations described in claim 18. In addition, Patel taught wherein the size of packets being sent is modulated in response to whether or not the packets are sent back-to-back (column 10, lines 2-12).

16. As for claim 20, the combination of Patel and Nandy disclosed all of the limitations described in claim 19. In addition, Patel taught wherein said size of packets being sent is reduced from the maximum segment size value according to a predetermined number of bits for indicating whether the packets are being sent back-to-

back (column 9, lines 60-64, where the maximum transmission unit is comprised of the maximum segment size).

17. As for claim 21, the combination of Patel and Nandy disclosed all of the limitations described in claim 20. In addition, Patel taught wherein said predetermined number of bits can be 1, 2 or 4 bits (column 10, lines 5-12, where this shows the one bit limitation).

18. As for claim 35, the combination of Patel and Nandy disclosed all of the limitations described in claim 34. In addition, Patel taught wherein said predetermined number of bits can be 1, 2, or 4 bits (column 10, lines 5-12, where this shows the one bit limitation).

**19. Claims 7, 10-12, 15, 17, 22-24, and 36-39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Patel, in view of Zhang et al. (Pre-Grant Publication No. US 2005/0144303 A1), hereinafter Zhang.**

20. As for claims 7, 15, and 17, Patel disclosed all of the limitations described in claims 1, 14, and 16 (respectively), but Patel did not explicitly state wherein said network operates according to a transport control protocol. However, Zhang did teach wherein said network operates according to a transport control protocol (0017, lines 1-3). Both the systems of Patel and Zhang are directed towards increasing efficiency of communication in a network and therefore, it would have been obvious to a person of



ordinary skill in the art at the time of the invention to combine the teachings of Patel to use TCP protocols, as taught by Zhang, In order to expand system usability as TCP is the standard protocol used for network communication.

21. As for claims 10, 24, 36, and 37, the combination of Patel and Nandy disclosed all of the limitations described in claims 1, 14, 27, and 36 (respectively), but the combination of Patel and Nandy did not explicitly state a means for the receiver to control packet train size in response to bandwidth estimations by changing a rate value  $m$  at which receipt acknowledgements (ACKs) are communicated from the receiver to said sender. However, Zhang did teach a means for the receiver to control packet train size in response to bandwidth estimations by changing a rate value  $m$  at which receipt acknowledgements (ACKs) are communicated from the receiver to said sender (0009, lines 3-9). Both the systems of Patel and Zhang are directed towards increasing efficiency of communication in a network and therefore, it would have been obvious to a person of ordinary skill in the art at the time of the invention to combine the teachings of Patel to modulate further elements that affect network congestion, as taught by Zhang, In order to improve the efficiency of the system by increasing the amount of factors taking into account when conducting network congestion procedures.

22. As for claims 11, 22, and 38, the combination of Patel and Nandy disclosed all of the limitations described in claims 1, 14, and 27 (respectively), but the combination of Patel and Nandy did not explicitly state wherein said congestion control parameters

comprise a slow start threshold. However, Zhang did teach wherein said congestion control parameters comprise a slow start threshold Both the systems of Patel and Zhang are directed towards increasing efficiency of communication in a network and therefore, it would have been obvious to a person of ordinary skill in the art at the time of the invention to combine the teachings of Patel to modulate further elements that affect network congestion, as taught by Zhang, In order to improve the efficiency of the system by increasing the amount of factors taking into account when conducting network congestion procedures.

23. As for claims 12, 23, and 39, the combination of Patel and Nandy disclosed all of the limitations described in claims 1, 14, and 27 (respectively), but the combination of Patel and Nandy did not explicitly state wherein said congestion control parameters comprise a congestion window value. However, Zhang did teach wherein said congestion control parameters comprise a congestion window value. Both the systems of Patel and Zhang are directed towards increasing efficiency of communication in a network and therefore, it would have been obvious to a person of ordinary skill in the art at the time of the invention to combine the teachings of Patel to modulate further elements that affect network congestion, as taught by Zhang, In order to improve the efficiency of the system by increasing the amount of factors taking into account when conducting network congestion procedures.

**24. Claim 26 is rejected under 35 U.S.C. 103(a) as being unpatentable over Patel, in view of Zhang, and in further view of Nandy.**

25. With respect to claim 26, Patel disclosed a system for controlling network congestion (column 3, lines 24-30), comprising: a device configured for communicating over a network; a processor within said device configured for controlling the sending and receiving of packets over said network; and programming configured for executing on said processor for, sending packets of a sequence in a back-to-back nature in a single burst in which there is no delay between the back of one packet and the beginning of the next packet (column 10, lines 2-12), explicit marking of packets which are sent back-to-back (column 10, lines 5-12), estimating network bandwidth in response to receipt of explicit indications of back-to-back packets or utilizing back-to-back packet estimations (column 9, lines 61-64 and column 13, lines 24-30).

However, Patel did not explicitly state controlling the length of packet trains transmitted by the sender in response to altering the rate at which receipt acknowledgements (ACKs) are communicated from the receiver to said sender as based on estimated network bandwidth. On the other hand, Zhang did teach controlling the length of packet trains transmitted by the sender in response to altering the rate at which receipt acknowledgements (ACKs) are communicated from the receiver to said sender as based on estimated network bandwidth (0009, lines 3-9). Both the systems of Patel and Zhang are directed towards increasing efficiency of communication in a network and therefore, it would have been obvious to a person of ordinary skill in the art

at the time of the invention to combine the teachings of Patel to modulate further elements that affect network congestion, as taught by Zhang, In order to improve the efficiency of the system by increasing the amount of factors taking into account when conducting network congestion procedures.

while Patel did provide a method to indicate that said packets are being sent back-to-back (column 10, lines 5-12) and that there are other means of doing as much (column 10, lines 46-52), the combination of Patel and Zhang did not explicitly state that one of the other means was by explicitly editing the maximum segment size. However, Nandy did teach editing the maximum segment size to provide an indication (column 10, lines 38-41, where this shows the congestion control window is adjusted and congestion control windows are adjusted by editing their associated MSS values; and column 7, lines 48-57, where this shows that the MSS indicates the amount of credits that can be sent. Thus, adjusting MSS values for indication purposes is shown).

Both the systems of Patel and Nandy are directed towards systems for congestion control and therefore, it would have been obvious to a person having ordinary skill in the art, at the time of the invention, to combine the teachings of Patel, to utilize MSS modulation indications, as taught by Nandy, in order to provide less packet overhead by not requiring bits for packet indications, Thus increasing the systems speed.

**26. Claim 25 is rejected under 35 U.S.C. 103(a) as being unpatentable over Patel, in view of Nandy, and in further view of Official Notice.**

27. As for claim 25, Patel did not explicitly state wherein said marking of packets is performed for every packet sent or performed in response to congestion. However, the examiner gives official notice that Patel's system could mark any amount of packets that it would find sufficient to complete its tasks and therefore, it would have been obvious to modify the teachings of Patel in order to mark every packet, but is likely not done because it would increase the overhead of the system.

***Response to Arguments***

28. Applicant's arguments with respect to claims have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

29. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **JOSEPH L. GREENE** whose telephone number is (571)270-3730. The examiner can normally be reached on Monday - Thursday from 9:00 AM to 4:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Follansbee can be reached on (571) 272-3964. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

JLG

/Hassan Phillips/

Primary Examiner, Art Unit 2451